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Report of the Secretary-General pursuant to Security Council resolution 2240 (2015)

I. Introduction

1. The present report is submitted pursuant to paragraph 18 of Security Council resolution 2240 (2015), by which the Council requested me to report on the implementation of the resolution, in particular paragraphs 7 to 10 thereof.

2. The report covers developments since the date of adoption of the resolution (9 October 2015) until 31 August 2016. The information and observations herein are based on submissions by Member States, regional arrangements and other relevant stakeholders. The United Nations system was also widely consulted.

II. Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya[1]

3. Notwithstanding my calls to address the causes and drivers that lead people to cross the Mediterranean Sea using irregular channels and to make saving lives a priority, national and regional efforts have not resulted in an immediate improvement in the situation. More than 10,000 men, women and children on their way to Europe have died or gone missing at sea since 2014. As at 31 August 2016, the Office of the United Nations High Commissioner for Refugees (UNHCR) had recorded 3,169 deaths and disappearances in the Mediterranean Sea and 281,740 arrivals in Europe by sea in 2016.

4. The large majority of men, women and children who are smuggled and trafficked by sea from the northern shores of Africa to Europe depart from Libya, in particular from the areas immediately east and west of Tripoli, and arrive in Italy. This is commonly referred to as the "central Mediterranean route". In 2015, UNHCR recorded more than 150,000 arrivals in Italy by sea, some 90 per cent of which had departed from Libya. According to UNHCR and the European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), as at 15 August 2016, more than 100,000 people, originating largely from sub-Saharan countries, had arrived in Italy in 2016. Those arriving include asylum seekers and refugees fleeing from conflict and persecution. The

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[1] Referred to herein as "smuggling and trafficking".

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routes and the composition of groups arriving remain in flux. Reflecting this dynamic, the European Union military operation noted a significant increase in movement along the sea route from Egypt to Italy and from Algeria to Italy in recent months. Some launches from Turkey and Tunisia to Italy were also observed. It assesses that increasing control over some routes, including from Libya to Italy, may have led to more frequent use of other routes. The number of unaccompanied or separated children arriving in Italy by sea has also increased significantly compared with 2015, by some 116 per cent for the period from January to July 2016.

5. Organized criminal networks, including those involved in smuggling and trafficking, have exploited the security situation in Libya to expand their operations, which in turn has fuelled instability. These profitable activities may have provided both direct and indirect funding for armed groups and terrorist organizations, further worsening the security situation and eroding government control. There are also signs that criminal enterprises have increased the fragility of governance structures by breeding corruption.

6. The business model of migrant smugglers is based on meeting the demand for crossings into Europe by asylum seekers, refugees and migrants. As controls tighten and in the absence of commensurate safe and regular pathways, irregular crossings become more difficult, leading to a growing market for the services of smugglers. An increase in demand can therefore be expected. The European Police Office (Europol) estimates that more than 90 per cent of the persons travelling irregularly to States members of the European Union in 2015 used facilitation services. It also estimates that criminal networks involved in migrant smuggling had a turnover of between 5 billion and 6 billion euros in 2015.

7. To make the crossing from North Africa to Europe, a variety and combination of vessels are utilized, ranging from single-use rubber dinghies and makeshift vessels to wooden boats and larger fishing vessels. Such vessels may be used not only for crossings, but also for transferring persons to other vessels and as lookout or guard vessels for smugglers and traffickers. These vessels, in addition to being unseaworthy and lacking life-saving equipment, mostly do not carry sufficient fuel to reach European shores. The European Union military operation assessed that migrant smuggling networks in Libya appeared to have found a reliable source of unseaworthy rubber boats, which is of particular concern. The consequence of this reckless endeavour is the immense loss of lives that we continue to witness. While smugglers do not usually accompany those transported, they are occasionally present on other vessels supervising the crossing. Those smuggled are usually instructed to manoeuvre the vessels, which often also carry communication equipment to dispatch distress calls directly to rescue institutions such as the Italian Maritime Rescue Coordination Centre.

8. The smuggling networks along the main routes of movement are loosely connected and vary in size and scope, involving nationals of more than 100 countries, according to the International Criminal Police Organization (INTERPOL) and Europol. The networks feature different key structures, including leaders, local managers, brokers, individuals in charge of the collection and transfer of money, local facilitators and providers of specific criminal services such as counterfeit identification and travel documents. The European Union estimates that the individual fare to cross from North African shores to Europe on an inflatable

boat ranges from 1,000 to 3,000 euros and more, depending on the type of vessel and services offered. The profit per transit for smugglers is put at between 70,000 and 400,000 euros, or more when fishing vessels are used. The smuggling of migrants is not an isolated undertaking. Individuals and networks also engage in other forms of criminal activity. Existing networks, smuggling infrastructure and logistics may also be used to clandestinely transport other illicit goods such as drugs or weapons, according to INTERPOL and Europol.

9. Since the adoption of Security Council resolution 2240 (2015), Member States have, unilaterally, bilaterally and multilaterally, including through regional organizations, taken measures to counter smuggling and trafficking off the coast of Libya and to strengthen search and rescue efforts in the Mediterranean Sea. These include the strengthening of border control agencies and border management, capacity-building and training and the targeted deployment of naval assets and operations in the Mediterranean Sea.

III. Inspection and seizure of vessels off the coast of Libya and related efforts

10. As part of efforts to prevent and combat smuggling and trafficking off the coast of Libya, Member States, both severally or through regional organizations, have inspected and seized vessels under applicable international law and in the exercise of the specific authority provided through resolution 2240 (2015). In addition, the Libyan authorities have reportedly conducted rescues or interceptions involving some 10,246 men, women and children in 2016, also within Libyan territorial waters.

11. In particular, the States members of the European Union, with the exception of Denmark, launched, on 22 June 2015, a naval operation to undertake systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers in order to contribute to wider European Union efforts to disrupt the business model of smuggling and trafficking networks and prevent the further loss of life at sea.

12. The operation carries out its work in the central part of the southern Mediterranean Sea. Its mandate has three operational phases. The first, completed in September 2015, involved supporting the detection and monitoring of migration networks through information gathering and patrolling on the high seas. According to Council of the European Union decision (CFSP) 2015/778 of 18 May 2015, the second phase foresees the boarding, search, seizure and diversion on the high seas of vessels suspected of being used for smuggling or trafficking, under the conditions provided for by applicable international law. These activities may be carried out also in territorial waters, provided that the authority for them is granted through any applicable Security Council resolution or consent by the coastal State concerned. In the third phase, the operation, in accordance with any applicable Council resolution or with the consent of the coastal State concerned, will take all necessary measures against vessels and related assets, including disposing of them or rendering them inoperable, which are suspected of being used for smuggling or trafficking, in the territory of that State, under the conditions set out in that resolution or consent.

13. The States members of the European Union, with the exception of Denmark, reported that they had implemented measures mentioned in paragraphs 7 to 10 of resolution 2240 (2015) as part of the second phase of the European Union military operation, which began on 7 October 2015. On 20 June 2016, the Council of the European Union extended the mandate of the operation until 27 July 2017 and expanded it to include assistance in the development of the capacities and in the training of the Libyan coastguard and navy in law enforcement tasks at sea, in particular to prevent smuggling and trafficking. As at 31 August 2016, the operation had rescued more than 25,400 men, women and children at sea and contributed through its assets to the rescue of many more.

14. The European Union military operation reported that, on 9 and 18 July 2016, it had, for the first time, detected and seized vessels manned by individuals suspected of smuggling migrants, apprehending the crew on the high seas off the coast of Libya. It noted that it had had reasonable grounds to believe that the vessels were being used by Libya-based organized criminal entities engaged in smuggling and trafficking. It noted that all the vessels that it had inspected and seized had been "unflagged". As at 9 August 2016, 84 persons suspected of smuggling migrants or facilitating such smuggling had been arrested by the Italian authorities following information provided or action taken by the operation.

15. As at 9 August 2016, the operation had disposed of 241 vessels, of which 198 were rubber boats, 38 wooden vessels and 5 fishing vessels. It noted that it towed or transported vessels to Italy, insofar as possible, also in view of the potential value to investigations and prosecutions. Otherwise, it disposed of them to avoid any risk to the safety of seafarers, navigation and the marine environment, in line with relevant international law and standards.

16. No further information was brought to the attention of the Secretariat regarding any additional inspections or seizures by Member States, acting severally or through regional organizations, engaged in efforts to combat smuggling and trafficking any unflagged or flagged vessels on the high seas off the coast of Libya, whether as permitted under applicable international law or in the exercise of the authority provided in resolution 2240 (2015).

17. The Security Council called upon Member States taking action under paragraphs 7 and 8 of resolution 2240 (2015) to cooperate, including by making good-faith efforts to obtain the consent of the vessel's flag State before using the authority under paragraph 7 and upon flag States concerned by such action to review and respond to requests in a rapid and timely manner. In that regard, the European Union military operation considers four hours a suitable time frame to qualify an effort to obtain consent by a flag State as being undertaken in good faith. To date, however, no such requests have had to be made.

18. The European Union military operation reported that it took into account legal obligations relating to the protection of human rights when carrying out all activities under the authority of resolution 2240 (2015), including in respect of the principle of non-refoulement.

19. Furthermore, in line with the call by the Security Council to provide for the safety of persons on board as an utmost priority and to avoid causing harm to the marine environment or to the safety of navigation, the European Union military operation noted that it had issued, or was issuing, standard operating procedures on

the prevention of sexual exploitation and abuse, the disposal of vessels in compliance with relevant international law and the treatment on board of persons rescued at sea.

20. In inspecting and seizing vessels suspected of involvement in smuggling and trafficking, the European Union military operation cooperates closely with the European Union executive agencies responsible for judicial cooperation in criminal matters (Eurojust), law enforcement (Europol) and border management (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union). The last-mentioned also maintains two joint maritime operations in the Mediterranean Sea: Triton, in the central Mediterranean, and Poseidon, in the eastern Mediterranean. To this end, these entities have adopted, in various forms, agreements on cooperation, coordination, the exchange of knowledge and information and the provision of support and have deployed liaison officers. In addition, there are continuing discussions between the military operation and other entities such as INTERPOL and the United Nations Office on Drugs and Crime (UNODC) to establish similar arrangements. The military operation seeks to deconflict its operations with the Libyan coastguard and the Italian naval operation Mare Sicuro by exchanging information on a case-by-case basis. It also works with the United States Africa Command, the United States European Command and the North Atlantic Treaty Organization (NATO) Maritime Command.

21. To assist in the investigation and prosecution of persons responsible for acts of smuggling and trafficking at sea, the European Union military operation cooperates closely with and provides information and evidence to the Italian authorities, which exercise criminal jurisdiction. On 22 October 2015, the Italian State Anti-Mafia Division issued guidelines concerning the legal requirements for Italy to exercise jurisdiction over persons apprehended at sea by the operation.

22. Broader cooperation is also continuing between the European Union military operation, international organizations, including the United Nations and its agencies, Member States and non-governmental organizations. A mechanism to deconflict and coordinate activities of Member States and other entities involved in maritime security operations has been established, called "Shared awareness and deconfliction in the Mediterranean".

IV. Support to Libya and related efforts to combat smuggling and trafficking off the coast

23. The Security Council, in its resolution 2240 (2015), called upon Member States to assist Libya, upon request, in building needed capacity to secure its borders and to prevent, investigate and prosecute acts of smuggling and trafficking through its territory and in its territorial sea.

24. On 23 May 2016, the Council of the European Union committed itself to undertaking work, at the request of and in partnership with the Government of National Accord of Libya, on a comprehensive approach to managing migration, including undertaking efforts to combat smugglers and traffickers and providing capacity-building and training for the Libyan coastguard and navy. On 23 August,

the European Union military operation and the Libyan coastguard and port security signed a memorandum of understanding on the training of the coastguard and navy.

25. On 4 August 2016, the Council of the European Union extended the mandate of the European Union Integrated Border Management Assistance Mission in Libya until 21 August 2017. The Mission closely cooperates with the United Nations Support Mission in Libya (UNSMIL). It is planning for a possible future European Union engagement in the areas of advice and capacity-building on matters of, among others, criminal justice, migration and smuggling and trafficking, in support and at the request of Libya.

26. On 9 July 2016, NATO announced that its anti-terrorism maritime operation, "Active Endeavour", had become a broader maritime security operation, "Sea Guardian", to perform the full range of maritime security operation tasks, as needed. The communiqué issued by the Heads of State and Government participating in the meeting of the North Atlantic Council held in Warsaw on 8 and 9 July documents an in-principle agreement on a possible NATO role in the central Mediterranean Sea to complement and support efforts of the European Union military operation, including through a possible contribution to building the capacity of the Libyan coastguard and navy.

27. The United Nations system and other entities also support the Government of National Accord and cooperate with those Member States providing assistance to Libya. UNSMIL monitors the situation of migrants in detention and has been raising its concerns specifically with the Libyan Department for Combating Illegal Migration, urging an end to widespread and grave abuses.

28. UNSMIL works with the European Union military operation, including in the development of capacity-building activities for the Libyan coastguard and navy. Since 2015, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNHCR have provided training sessions to the staff of European Union naval ships in the Mediterranean Sea on human rights in law enforcement, the human rights of migrants, the standards of treatment for all those rescued or intercepted at sea and the protection and human rights of refugees. Following the extension of the operation's mandate in June 2016, UNHCR has held preliminary discussions on possible support for relevant training activities, notably on international refugee and human rights law. UNODC also held several consultations with representatives of the operation to develop synergies in the framework of capacity-building activities to address smuggling and trafficking.

29. Since mid-2015, UNHCR and the International Organization for Migration have held three technical consultations with the Libyan coastguard, the Libyan Department for Combating Illegal Migration and non-governmental organizations to consider issues relating to rescue at sea. Work is also under way to establish a mechanism to enhance communication and facilitate cooperation between the Libyan authorities, international organizations and non-governmental organizations, in order to strengthen national operational responses and enhance predictability in the provision of humanitarian assistance and support upon disembarkation of persons rescued at sea.

30. The International Organization for Migration carries out humanitarian repatriation activities under several projects in Libya. This is part of a comprehensive approach to migration management that is aimed at the orderly and

humane return and reintegration of migrants who are unable or unwilling to remain in host countries that experience conflict or natural disaster and who wish to return voluntarily to their countries of origin. It also facilitates the safe and dignified return of stranded migrants.

V. International efforts to combat smuggling and trafficking

31. At the international level, renewed political, humanitarian and other efforts are under way to comprehensively respond to the issue of large movements of refugees and migrants, including smuggling and trafficking. The high-level plenary meeting of the General Assembly on the subject on 19 September 2016 will afford a unique opportunity to define and advance a collective response. The United Nations cooperates with and supports the efforts of Member States to counter smuggling and trafficking in various ways, as detailed below.

32. In 2015, UNODC announced a strategy to address the smuggling of migrants across the Mediterranean, aimed at providing a comprehensive, strategic and integrated response. In implementing the strategy, and within the framework of the four-year UNODC-European Union global action to prevent and address trafficking and smuggling, covering the period 2015-2019, UNODC cooperated, for example, with Egypt and Morocco to assess their responses to trafficking and smuggling. With regard to enhancing national capacity and legislative frameworks, more than 10 capacity-building activities were undertaken by UNODC in North Africa and the Middle East, including in countries constituting transit points located on the Mediterranean coast.

33. In promoting regional and transregional cooperation, UNODC convened, from 14 to 16 October 2015 in Syracuse, Italy, a transregional training workshop on preventing and combating the smuggling of migrants by sea affecting the Mediterranean region, one of the first technical assistance initiatives delivered since the adoption of resolution 2240 (2015). The workshop was organized for front-line officers, criminal justice practitioners and policymakers from States members of the European Union, States in the Mediterranean basin and Egypt, Eritrea, Lebanon, Libya, Mali, Morocco, the Niger, Nigeria, Somalia, the Sudan, Tunisia and Turkey.

34. UNODC also supports countries of origin and transit along the route to the Mediterranean coast, delivering specialized training on addressing the smuggling of migrants by air and detecting document fraud in April 2016. In East Africa, UNODC has provided legislative support and training on trafficking and smuggling. In West Africa, it is supporting police and gendarmerie training institutes in several States in order to integrate modules on smuggling and trafficking into national training curricula. These activities are implemented within the framework of the UNODC regional strategy for combating trafficking and smuggling, covering the period 2015-2020.

35. UNODC regional programmes, strategies and dedicated projects supported Member States globally. Among them, more than 40 major technical assistance activities provided support to some 70 countries and trained in excess of 1,100 criminal justice practitioners and government officials in effectively preventing and prosecuting trafficking and smuggling. UNODC provided substantive support to the third session of the Working Group on the Smuggling of Migrants, held in Vienna from 18 to 20 November 2015, which resulted in the

adoption of targeted recommendations on the smuggling of migrants by sea (see CTOC/COP/WG.7/2015/6). These addressed jurisdictional questions over incidents of migrant smuggling on the high seas involving unflagged vessels, not holding seafarers criminally liable for assisting, rescuing or disembarking smuggled migrants in distress at sea and providing assistance and protection to smuggled migrants.

36. Economic and Social Council resolution 2014/23 on strengthening international cooperation in addressing the smuggling of migrants and the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted at the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, in 2015, encourage States to consider undertaking concurrent financial investigations when they investigate and prosecute smuggling and trafficking. To this end, UNODC assists Member States to counter the business model of organized criminal groups by enhancing their capacities to trace, freeze and confiscate proceeds acquired through smuggling and trafficking and to enhance the coordination and sharing of information among relevant agencies.

37. In January 2016, OHCHR proposed specific measures to address the protection gaps for migrants in transit, including with regard to their vulnerability to violence, abuse and exploitation (see A/HRC/31/35).

38. In September 2015, 26 States members of the International Maritime Organization (IMO) and international and non-governmental organizations concluded that the international legal framework for the rescue at sea of persons in mixed migration flows — movement of refugees and asylum seekers, among others — was sound. They stressed, however, that the framework was not designed or envisaged for large movements of refugees and migrants by sea, making the prevention of grossly overloaded, manifestly unsafe vessels from taking to sea key to reducing the loss of lives. The complex issues surrounding unsafe mixed migration by sea were also debated at a two-day symposium hosted by the World Maritime University in Malmö, Sweden, on 26 and 27 April 2016. At the symposium, IMO noted that the maritime sector and others could contribute to alleviating the root causes of unsafe mixed migration by sea by focusing on creating conditions for increased employment, prosperity and stability by enhancing the maritime sector and sustainable blue economy in developing countries.

39. Two editions of the Operational Forum on Countering Migrant Smuggling Networks, jointly organized by INTERPOL and Europol in October 2015 and February 2016, contributed to the reinforcement of trust and enhancement of operational cooperation between countries of origin, transit and destination affected by the current movement of refugees and migrants towards Europe. INTERPOL also organized international fugitive round-up and arrest operations to assist Member States in locating and apprehending criminals wanted for involvement in smuggling migrants, to promote the global exchange of information concerning their whereabouts, to enhance networking between investigators and specialized units and to promote the use of INTERPOL notices and diffusions.

40. The United Nations also supports Member States in the reintegration of returning migrants and in addressing the root causes and drivers of movement in neighbouring countries and the wider region, such as political and economic

exclusion, marginalization, discrimination and violent extremism. Improved socioeconomic conditions, including increased access to basic services and political participation, strengthened security and justice systems and the creation of commensurate safe and regular migration channels, will be key contributions to ensuring that migrants are not compelled to seek out dangerous and life-threatening routes.

41. Efforts to counter smuggling and trafficking must be embedded in global efforts to respond to displacement and migration. At the United Nations, a steering committee, chaired by the Deputy Secretary-General and bringing together relevant United Nations entities, has guided the system-wide response to large movements of refugees and migrants since mid-2015, including how to best support Member States in their efforts to define a globally coordinated approach to managing human mobility in all its forms and to ensure the protection of the rights of migrants and refugees.

42. On 30 September 2015, I convened a high-level side event of the General Assembly on strengthening cooperation on migration and refugee movements in the perspective of the new development agenda, which was aimed at encouraging enhanced cooperation and collective action in dealing with the challenges of migration and human mobility. I emphasized that there was a need to save lives and to ensure protection and non-discrimination in the response, which should be based on the principle of shared responsibility and cooperation. A key message of the event was that only through the creation of safe and regular channels of movement could the business model of human smugglers and exploitation by human traffickers be stopped.

43. On 20 November 2015, the President of the General Assembly convened a plenary meeting of the Assembly on global awareness of the tragedies of irregular migrants in the Mediterranean basin, with specific emphasis on Syrian asylum seekers, which continued these important reflections. In its annual resolution on oceans and the law of the sea, the Assembly has continued to provide policy guidance on the issue of migration by sea. In its resolution 70/235, the Assembly, among other things, noted with grave concern the recent proliferation of, and endangerment of lives through, the smuggling of migrants by sea and underscored the necessity to address such situations in accordance with applicable international law. In addition, the Assembly recognized that all States must fulfil their search and rescue responsibilities in accordance with international law, including the United Nations Convention on the Law of the Sea.

44. On 16 December 2015, the Security Council issued a presidential statement (S/PRST/2015/25) following its first-ever meeting on trafficking in persons, in which it called upon Member States to reinforce their political commitment to and improve their implementation of applicable legal obligations to criminalize, prevent and otherwise combat trafficking, and to strengthen efforts to detect and disrupt it. The Council importantly noted that trafficking undermined the rule of law and contributed to other forms of transnational organized crime, which could exacerbate conflict and foster insecurity. In its press statement of 22 April 2015, the Council had raised those concerns on the occasion of a maritime tragedy off the coast of Libya. The Council expressed its concern at the implications for regional stability posed by transnational organized crime and illicit activities, such as trafficking and

smuggling, and condemned and deplored the said acts, which undermined the process of stabilization of Libya and endangered the lives of people.

45. On 5 January 2016, I appointed a special adviser to lead the United Nations preparations for the high-level plenary meeting of the General Assembly to address large movements of refugees and migrants, to be held on 19 September 2016. In preparation for the meeting, in my report entitled "In safety and dignity: addressing large movements of refugees and migrants" (A/70/59), I reiterated that there was a need to counter smuggling and trafficking as part of a global response to those large movements. In that regard, I stress that only a comprehensive approach to forced displacement and global mobility, based on responsibility-sharing and the facilitation of orderly, safe, regular and responsible migration, will constitute an effective strategy.

46. On 30 March 2016, a high-level meeting on global responsibility-sharing through pathways for admission of Syrian refugees, convened by UNHCR in Geneva, secured important pledges to increase opportunities for the admission of Syrian refugees.

VI. Key issues

47. The risk to life and bodily harm is not confined only to the actual crossing of the Mediterranean Sea, but extends to the time before and after crossings. Throughout the journey, people are at high risk of being robbed of their belongings and subjected to repeated abuse. The men, women and children who arrive in Libya often remain dependent on the same criminal networks that brought them there. The unequal power relationships between smugglers and migrants, as well as traffickers and their victims, often result in disproportionate vulnerability to violence, abuse and exploitation. This holds particularly true for women at risk, children, older persons and persons with disabilities. Most often, they are unable to seek justice and redress. At the same time, they are at risk of being forcibly returned to their country of origin or third countries. Operations to counter human smuggling must ensure that effective police and criminal justice protection is provided to all persons and that their rights are ensured.

48. Libya is not party to the 1951 Convention relating to the Status of Refugees or the 1967 Protocol thereto. It has ratified the Organization of African Unity Convention governing the specific aspects of refugee problems in Africa of 1969, but has yet to adopt asylum legislation or establish asylum procedures. Under Libyan law, all irregular entry, stay or departure is criminalized.

49. The transitional authorities in Libya are facing multiple challenges, including political divisions, instability, violent extremism and the need to improve public services. At the same time, men, women and children continue to pass through the country. Refugees and migrants rescued or intercepted at sea by the Libyan authorities are disembarked and transferred to detention centres in Libya, where they are at risk of being held arbitrarily for indefinite periods and have no recourse to judicial review. These facilities, run by the Libyan authorities, but also by non-State groups, often expose those detained to inhuman and degrading conditions and the risk of torture, ill-treatment, extortion, forced labour, sexual and gender-based violence and abuse, religious discrimination and murder. Very often, detainees have little access to basic goods and services. Detention centres are chronically

overcrowded. Sanitary facilities are insufficient and often broken, undernutrition is rampant and a lack of health facilities and recreational opportunities creates undue suffering. The conflict in Libya has exacerbated the already-vulnerable situation of asylum seekers, refugees and migrants, who are at risk of abduction, torture and other ill-treatment, exploitation, extortion and killings by armed groups, smugglers and traffickers, in addition to Libyan officials. For example, OHCHR has received reports that it deems credible with regard to the commission of sexual violence, including rape, against women and girls in migrant detention facilities by guards, as well as by non-State actors, such as smugglers and traffickers, more broadly.

50. In addition to being exposed to these risks, some groups are even more vulnerable. Information received from humanitarian partners on the ground indicates that persons from sub-Saharan Africa tend to be detained for longer periods than those from elsewhere. UNHCR expressed particular concern with regard to the high number of unaccompanied and separated children. In comparison with 2015, 2016 saw an increase in the share of women and children forming part of the movements across the Mediterranean Sea. With this development, the risk of sexual and gender-based violence, forced and child labour and other forms of exploitation and discrimination increases.

51. When men, women and children are intercepted or rescued off the coast of Libya, it is of utmost importance to ensure their continued security and safety, in line with international law, including the prohibition of refoulement. In October 2015, UNHCR updated its position on returns to Libya, in which it urged all States to suspend forcible returns to the country until the security and human rights situation had improved considerably. This advice remains valid without prejudice to further obligations under international, regional or national law to provide international protection for persons found to meet the criteria for refugee status or other forms of international protection under the 1951 Convention or other relevant instruments. UNHCR also urged States to refrain from returning to Libya any third-country nationals intercepted at sea and to ensure that those in need of international protection are able to gain access to fair and effective asylum procedures upon disembarkation.

52. OHCHR has called for any cooperation between the Government of National Accord in Libya and other Member States and regional organizations with regard to the provision of capacity-building support to the Libyan coastguard and navy to be carried out in full respect for the human rights of the people involved. For example, such cooperation should not facilitate the return of rescued persons to situations in which they would be at risk of arbitrary detention and abuse. In view of Member States, acting through regional organizations, expanding their activities into the territorial waters of Libya, including for capacity-building activities, this consideration must remain highly pertinent.

53. International law also requires the disembarkation of persons rescued at sea in a place of safety. The IMO Maritime Safety Committee has not yet considered the issue in the Libyan context, based on the International Convention for the Safety of Life at Sea, 1974, and Committee resolution MSC.167(78) on guidelines on the treatment of persons rescued at sea. In the light of the volatile security situation and the particular protection risks for third-country nationals, however, UNHCR does not consider that Libya currently meets the criteria to be designated as a place of safety for the purpose of disembarkation following rescue at sea.

54. The European Union has noted that it could not board, inspect and seize all vessels suspected of being used for smuggling and trafficking off the coast of Libya for legal reasons, given that the Security Council, in its resolution 2240 (2015), did not address presumed places of departure other than Libya. The European Union assesses that, with changing and emerging routes to Europe, its military operation is not able to counter the issue to the best extent possible. The operation is of the view that, while its presence and activities have limited the freedom of manoeuvre of migrant smugglers and affected their operations and tactics, effective measures have to be taken on land and at sea.

55. Large-scale migration by sea presents a range of challenges to the maritime sector and seafarers. Legally, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, requires a State party that takes measures against a vessel suspected of smuggling migrants by sea to take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State and not to endanger the security of the vessel or its cargo.

56. More than 80 per cent of global trade moves by sea. Any disruption to the maritime part of the supply chain therefore constitutes a risk to national and regional economies. In 2014 and 2015 in the Mediterranean Sea alone, some 1,300 merchant ships were diverted from their routes, taking part in 392 rescue operations and saving the lives of 57,515 men, women and children.

57. Merchant seafarers continue to bravely perform their duties of rescue, but the risk to their safety and that of those rescued while they are aboard these ships should not be underestimated. Merchant ships generally have small crews and are not configured to carry, feed and care for large numbers of people, many of whom are desperate, under stress and potentially agitated. They also do not carry personnel trained to respond to the medical needs of survivors of shipwrecks and other trauma. With their often high sides, no appropriate embarkation equipment and crews untrained in rescuing large numbers of people at sea safely, merchant vessels are not suited to performing this function. Many of the recorded deaths of migrants at sea occurred when boats capsized within sight of a potential rescue ship and the crews were powerless to save them. Ships are also inherently dangerous places for those not trained in the rigorous safety standards observed by seafarers, with additional measures required if dangerous cargo is carried. IMO, UNHCR and the International Chamber of Shipping have developed guidance on rescue and large-scale rescue operations at sea.

58. Smuggling and trafficking also have an impact on the fisheries sector, including fishing fleet operations, in Libya. According to the Food and Agriculture Organization of the United Nations, the current contribution of the fisheries sector to the national economy is well below expectations. The national fishing fleet reportedly numbered around 3,000 vessels in 2015. The Secretariat is not aware of any effects on the marine environment caused by action taken under paragraphs 7 and 8 of resolution 2240 (2015).

VII. Observations

59. I highly commend the invaluable search and rescue efforts of the brave men and women who risk their lives to save others, as part of national authorities, the merchant fleet, civil society or the communities along the shores of the

Mediterranean Sea, including the European Union military operation. At the same time, I am deeply concerned that the number of men, women and children who die or go missing in the Mediterranean Sea has not fallen. Until prevention efforts bear fruit, I call upon Member States to further strengthen dedicated search and rescue capabilities and to undertake efforts to mitigate the impacts of smuggling and trafficking on seafarers, merchant shipping and trade.

60. A truly sustainable and effective strategy to address the proliferation of smuggling and trafficking off the coast of Libya can be found only in a multidimensional approach that is aimed at addressing the causes and drivers of people leaving their homes. At the same time, the need for safe passage and protection has to be met, rooted in cooperation among countries of origin, transit and destination and based on international solidarity. Ensuring that persons are not compelled to resort to facilitation services to irregularly cross borders not only destroys the business model of smugglers, but also prevents the deaths, suffering and exploitation of the men, women and children who are at the mercy of organized criminal groups.

61. Such a strategy includes a law enforcement component, in particular against organized criminal actors, the prevention of armed conflict and violence and efforts to end persecution and systematic human rights violations, address governance and rule of law deficits and create economic opportunities and sustainable and inclusive development. Measures to better prevent and control irregular border crossings must go hand in hand with increased safe and regular avenues for movement for refugees and migrants. All measures to counter smuggling and trafficking have to be carried out in full respect of international human rights law and related standards. I recognize that such a strategy requires efforts that go beyond national and regional measures and are closely linked to renewed global commitments to address large movements of refugees and migrants, to prevent violent conflict and violent extremism, to address ever-growing humanitarian needs and to move towards sustainable development for all. In this context, the Sustainable Development Goals provide a suitable framework to address some root causes of involuntary movements of refugees and migrants and to facilitate well-managed migration policies.

62. Men, women and children continue to be smuggled and trafficked by sea in substantial numbers from Libya to Europe. It is first and foremost the responsibility of Member States to prevent proliferation in smuggling and trafficking, including off the coast of Libya. When doing so, cooperation among Member States, and with other relevant actors, is essential. The United Nations Convention against Transnational Organized Crime, its Protocol against the Smuggling of Migrants by Land, Sea and Air and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, establish general and specific forms of cooperation and assistance for the prevention, investigation and prosecution of offences covered by the instruments. Provisions relate to cooperation among States parties and measures to strengthen coordination among them, to the adoption of multilateral, regional and bilateral agreements and arrangements to set reasonable time frames for responding to requests, to the circumstances of boarding of vessels suspected of being used for migrant smuggling, and to jurisdictional questions when offences have been committed aboard vessels flying their flag as well as unflagged vessels. I encourage Member States to closely cooperate to counter smuggling and trafficking and make use of avenues of cooperation provided in relevant international instruments. In addition, I echo the call of the Security Council for

Member States to consider ratifying or acceding to, and for States parties to effectively implement, the Protocol against the Smuggling of Migrants and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

63. I welcome the efforts of Member States to work with the Government of National Accord in Libya and to cooperate with one another to address the threat to peace and security posed by smuggling and trafficking. As efforts are strengthened, it is important to continue to integrate them into the broader work towards stability, security and good governance in Libya. The links between smuggling and trafficking and other criminal activities, including financial aspects, have to be closely monitored and accounted for.

64. Smuggling and trafficking also affect the political transition and implementation of the Libyan Political Agreement, signed in Skhirat, Morocco, on 17 December 2015. The strengthening of criminal and terrorist organizations and increased security threats impede the implementation of the interim security arrangements outlined in the Agreement. The Presidency Council of the Government of National Accord, which is establishing effective control over State institutions following its arrival in Tripoli on 30 March 2016, is under growing public pressure to improve service delivery. International and national pressure to stem the flow of men, women and children passing through the country comes on top of the many other challenges facing the transitional authorities, including bridging the political divide, improving security and public services, combating terrorism and promoting national reconciliation. I commend the strong international support offered to the Presidency Council in its efforts to tackle these issues.

65. In particular, I commend Member States on their support offered and provided to build the capacity of the Government of National Accord to prevent the proliferation of smuggling and trafficking, including at sea. Such capacity-building efforts have to include support for ensuring the protection of human rights, including the rights and needs of asylum seekers, refugees and migrants. In particular, they should not facilitate the return of persons to situations in which they would be at risk of arbitrary detention and other abuses. The needs of vulnerable or traumatized individuals are of particular concern in this regard. In addition, the rights, including the right to justice, of those suspected of smuggling migrants or trafficking in persons have to be ensured. I urge the Government of National Accord to improve the protection and conditions for refugees and migrants in Libya, in particular by working to improve conditions in detention facilities and ending arbitrary detentions. I also call upon it to consider acceding to relevant international instruments, including the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, adopting an asylum policy and decriminalizing irregular migration.

66. In all efforts to prevent and counter smuggling and trafficking, it is of utmost importance to adopt policies and processes that are sensitive to the immediate needs of all persons who have been exposed to physical or psychological danger during their journey, whether by land or by sea, and regardless of their migration status. Their immediate needs must be met and their human rights protected. Protection from refoulement and the particular needs of those seeking asylum are likewise vital considerations. Standardized procedures should be put in place to ensure the rapid and accurate identification and referral of migrants in situations of particular

vulnerability to appropriate services. Children and women in situations of vulnerability are particularly exposed to risks throughout all sections of their movement, including rescue operations, inspections and seizures of vessels and transfers to and disembarkations at places of safety, as well as throughout the process of status determination. I note with concern the significant increase in the number of unaccompanied or separated children arriving by sea in Italy in 2016 and encourage the taking of specific measures to ensure that their particular protection needs are met. I welcome the steps taken by the European Union military operation to prevent sexual exploitation and abuse. I call upon Member States, in particular those taking action in the Mediterranean Sea, to place those concerns at the heart of their operational response in all its aspects, examine their existing policies and integrate those considerations into their efforts to build and strengthen capacity to counter smuggling and trafficking by sea.

67. I welcome the efforts undertaken by Member States and other entities, including the European Union military operation, to cooperate, exchange information and provide mutual support and to coordinate their activities at sea, including with regard to the inspection and seizure of vessels, through institutional and legal arrangements. I encourage Member States to continue to strengthen their cooperation with one another and with all other relevant actors, especially as engagement to counter smuggling and trafficking in the Mediterranean Sea is being reinforced. A shared understanding of the challenges associated with countering the problem is key to developing effective and complementary responses.

68. In view of the complex and transnational nature of the crimes committed in the process of smuggling and trafficking, cooperation among Member States regarding the investigation and prosecution of those responsible is of particular importance. I welcome existing measures and encourage Member States to redouble their efforts to end the impunity enjoyed by criminal networks involved in this crime and disrupt their business model, including by tracing, freezing and confiscating proceeds. Recognizing that corruption is a key facilitator of smuggling and trafficking, I call upon Member States to integrate anti-corruption measures into their efforts.

69. The routes that refugees and migrants follow towards Europe are not static, as illustrated by recent departures from locations other than Libya. Migrant smugglers adapt when conditions change. Vessels launch from new locations and fresh routes emerge. I call upon countries of origin, transit and destination, the Security Council and those Member States taking action to counter smuggling and trafficking off the coast of Libya to respond to such changing dynamics with flexibility and increased cooperation to ensure continued and effective efforts, including the investigation and prosecution of those responsible for smuggling and trafficking.